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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,934	07/03/2003	Sadao Kanbe	45360	3959
1609 7590 08/07/2007 ROYLANCE, ABRAMS, BERDO & GOODMAN, L.L.P. 1300 19TH STREET, N.W. SUITE 600 WASHINGTON,, DC 20036				
			EXAMINER HAIDER, SAIRA BANO	
			ART UNIT 1711	PAPER NUMBER
			MAIL DATE 08/07/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/611,934

Applicant(s)

KANBE ET AL.

Examiner

Saira Haider

Art Unit

1711

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: Claim 9 and the dependent claims thereof have not been considered in the present form, thus require further consideration and/or search by the examiner. Additionally, the newly added limitation to claim 9 regarding the absence of a binder in the microcapsule composition was not previously claimed, thus raises a new issue requiring further consideration and/or search by the examiner.

Continuation of 11. does NOT place the application in condition for allowance because: The examiner has not replied to arguments based on amendment(s) that will not be entered.


Applicants have argued that both of the primary references fail to disclose the particle diameter; attention is directed to the rejections and the cited portions of the references. In response to applicants' argument that about 25 microns fails to read on 30 microns, the examiner maintains the position that the term "about" allows for variation and thus meets the claimed limitation. Further, it is noted that the Hayashi reference discloses particle diameters in the range of 10-200 microns [0036].

Applicants have essentially argued that the 103 rejections are invalid because the Liang reference does not cure the deficiencies of the primary references. In support of their argument, applicants have stated that Liang does not disclose a microcapsule composition and thus there is no teaching or suggestion to provide the claimed particle diameter. The examiner has thoroughly considered applicants' arguments and the support provided, and concludes that the obviousness rejections are valid. It is noted that the cited portion of the Liang reference is [0007] which discloses that a large particle size distribution is not desired, thus motivating one to narrow the particle size distribution. Further the examiner has presented rational that modification of the particle size distribution would have been obvious to one of ordinary skill in the art. Applicant has not provided evidence to the contrary. Rather, the Albert reference teaches one to select an encapsulation technique to control the particle size distribution. Additionally, since Liang recognizes particle size distribution as a result effective variable, it would have been obvious to modify the distribution in order to obtain optimum results. It is not necessary for the Liang reference to disclose the mode of distribution optimization, since one of ordinary skill in the art would readily be capable of optimizing the distribution. Thus evidence of obviousness outweighs evidence of non-obviousness and the rejections are rendered valid.

Applicants' have argued that the process limitation of claim 12 is a structurally defining limitation, as supported by the examples and comparative examples of the specification. In response, it is noted that the examples and comparative examples fail to establish that the absence of drying in the preparation of the claimed microcapsules results in a structural difference. Rather, it is noted that the inventive examples of applicant involves suction filtration resulting in the microcapsules as a filtered cake. Hence, the inventive examples clearly involve a type of drying, even though applicants' state in the abstract that the claimed product is obtained without involving the step of drying the microcapsules.

In reference to claim 13 (drawn to wet classification) as a structurally defining limitation, the examiner has discussed the employment of wet classification in the Albert reference, thus treating the limitation as a structurally defining limitation. Applicants have not responded to this portion of the rejection. Further, it is noted that the Hayashi reference discloses wet classification [0317].

Thus, in view of the foregoing the examiner maintains the positions set forth in the Final Office Action.


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700